

# SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Assembly Budget Comm. Analyst: LuAnna Hass Bill Number: AB 1752

Related Bills: See Prior Analysis Telephone: 845-7478 Amended Date: July 27, 2003

Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Child Support Enforcement/Order To Withhold/Claims Of Exemption

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended \_\_\_\_\_.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

☒ AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as amended June 23, 2003.

☒ FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO \_\_\_\_\_.

☒ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED June 23, 2003, STILL APPLIES.

OTHER - See comments below.

## SUMMARY

With respect to child support collections administered by the Franchise Tax Board (FTB), this bill would make various changes to the laws regarding the information obtained through the Financial Institution Match System.

This analysis will not address the bill's provisions relating to human services, social programs, and the budget, as they do not impact the department or state income tax revenue.

## SUMMARY OF AMENDMENTS

The July 27, 2003, amendments made various changes to the bill regarding the 2003 budget. The amendments do not impact the department. For convenience, the department's existing concerns as well as the fiscal and economic impacts are provided below. The remainder of the department's analysis of the bill as amended June 23, 2003, still applies.

## POSITION

Pending.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Legislative Director

Date

Jana Howard for Brian Putler 7/27/03

## **ANALYSIS**

### **IMPLEMENTATION CONSIDERATIONS**

Generally, this bill could be implemented by FTB without significant difficulties. However, this bill would allow, under certain circumstances, the first \$3,500 of an obligor's assets to be exempt from levy without the obligor having to file a claim for exemption. To prevent confusion, the author should amend the bill to clarify whether the \$3,500 exemption applies to each financial institution that receives a levy or to an obligor's total assets.

### **TECHNICAL CONSIDERATIONS**

This bill would move the current law provision that requires the counties to notify FTB if an obligor of past-due child support has at least 50% of their earnings being withheld for support. Subdivision (g) of Section 19271.6 contains a cross-reference that should either be updated or removed depending on the author's intent.

A provision of this bill would require a financial institution, person, or securities intermediary to liquidate the financial assets of an individual obligor when FTB issues a levy under current tax law. However, the reference to the current tax law regarding levies contains an unnecessary reference to Section 18670.5, which is a provision of law that allows FTB to issue levies to financial institutions using electronic means. Department staff suggests the author remove this unnecessary reference.

## **FISCAL IMPACT**

A provision of this bill would allow FTB to issue levies on an obligor's assets in instances where:

- A court has ordered an obligor to make scheduled payments and the obligor is in compliance with that order.
- An earnings assignment order that includes an amount for past-due support has been served to the obligor's employer and earnings are being withheld.
- At least 50% of the obligor's earnings are being withheld for support.

As a result, departmental costs associated with this provision would be approximately \$266,000. These costs include the system programming and testing costs needed to modify the system to issue Order To Withhold (OTWs) on accounts that meet the above criteria.

The proposed Budget Act includes an increase in the budget for the Department of Child Support Service's (DCSS) of \$288,000 for fiscal year 2003/04 for FTB's costs to modify the systems to issue levies as described above. Upon approval of the Budget Act, DCSS's budget would be increased to reflect the \$288,000 increase. FTB staff would then pursue the appropriate reimbursement authority that would give FTB spending authority to use the funds as described above.

## **ECONOMIC IMPACT**

### **Collection Estimate**

Based on the discussion that follows, below, it is not possible at this time to provide an estimate of the impact this bill will have on child support collections.

### Collection Discussion

#### Levy/OTW

This bill would allow FTB to levy an obligor's assets that would otherwise have been protected from collection under current law. In specific circumstances, the first \$3,500 of an obligor's assets would be exempt from levy by this bill. The data and information necessary to determine the number of additional obligors that FTB would levy and of those obligors the number that would receive the \$3,500 exemption is not available at this time. However, to the extent that any obligor has assets in excess of \$3,500, collections could increase accordingly.

#### Liquidation Of Assets/OTW

It is anticipated that this provision could accelerate the collection of assets. However, the impact on collections is unknown at this time because data is not available regarding the number of accounts 1) where an obligor may have assets that would need to be liquidated, and 2) that may be subject to the \$3,500 automatic exemption from levy.

#### Offer In Compromise (OIC) Program

It is not possible to project in advance the response of obligors who would file for and have all or a portion of their child support arrearages forgiven and the total amount forgiven. Any "net" additional impact this provision may have on child support collections would depend on the extent to which such amounts would have otherwise been collected through FTB's existing child support program.

### **ARGUMENTS/POLICY CONCERNS**

Current law provides that debtors may receive some form of an exemption with respect to judgment creditors. A provision of this bill would allow an individual obligor that owes past due child support to receive or apply to receive a claim for exemption from an FTB levy in certain circumstances. However, FTB is not considered a judgment creditor and has authority under state income tax law to collect specific debts using remedies such as withholding orders and OTWs, which are not currently subject to any exemptions.

A provision of this bill would require a financial institution, person, or securities intermediary to liquidate the financial assets of an individual obligor within 20 days of receiving a levy from a local child support agency or FTB. However, an obligor with assets in excess of the levy amount would be allowed 10 days from the service of the levy to designate to the financial institution the asset or assets that are to be liquidated. However, the obligor may not have sufficient time to notify the financial institution of the decision to liquidate depending on the mailing of the notice from the financial institution to the obligor. The financial institution may liquidate and send FTB the funds prior to the obligor's decision about liquidating or prior to the obligor applying for an exemption from the FTB levy. Absent clarification, FTB staff would assume that an agreement could be reached regarding the liquidation of the assets with the appropriate financial institution on a case-by-case basis.

### **LEGISLATIVE STAFF CONTACT**

LuAnna Hass  
Franchise Tax Board  
845-7478  
[LuAnna.Hass@ftb.ca.gov](mailto:LuAnna.Hass@ftb.ca.gov)

Brian Putler  
Franchise Tax Board  
845-6333  
[Brian.Putler@ftb.ca.gov](mailto:Brian.Putler@ftb.ca.gov)